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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,431	09/02/2003	Andrea C. Nasstrom	0001263/2232USU	1893

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Charles N.J. Ruggiero, Esq.
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
10th Floor
One Landmark Square
Stamford, CO 06901-2682

EXAMINER

MILLER, BENA B

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/653,431

Applicant(s)

NASSTROM ET AL.

Examiner

Bena Miller

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-28, 30-47 and 49-62 is/are pending in the application.
- 4a) Of the above claim(s) 49-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-28 and 30-47 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Bena B. Miller

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date ____.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 13 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Castillo (US Patent 6,101,366) or Giannini (US Patent 4,860,364).

The device of Castillo or Giannini reads on the structural limitations of the claims including an amplifier (col. 2, par. 2 of Castillo).

Claims 16, 18, 19 28, 30, 31, 34, 36 and 38 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Savides (US Patent 3,670,321).

The device of Savides reads on the structural limitations of the claims including an amplifier (86).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-12 and 14 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Castillo or Giannini.

Castillo or Giannini teaches most of the elements of the claimed invention except for high impact polystyrene porene material. At the time the invention was made, it would have been an obvious matter of design choice to a persons of ordinary skill in the art to make the material of Castillo or Giannini high impact polystyrene porene because Applicant has not disclosed that high impact polystyrene porene material provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the material of Castillo or Giannini and applicant's invention, to perform equally well because both materil would perform the same function of allowing sound to generate therethrough.

Therefore, it would have been prima facie obvious to modify Castillo or Giannini to obtain the invention specified in claim 14 because such modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Castillo or Giannini.

Further, it well known in the art to use motion switches for toys. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a motion switch for the device of Castillo or Giannini for the purpose of producing sounds upon the motion of an individual. Further, claims 7-12 do not appear to contain any additional features, which in combination with the features to any claim to which they refer, add anything novel.

Claims 17, 21-27, 32, 39-45 and 47 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Savides.

Savides teaches most of the elements of the claimed invention except for shirt and a motion switch. It should be noted in lines 1 and 2, Savides teaches a noise making device is worn in a pocket of a garment. It would have been obvious to one having ordinary skill in the art to use a shirt with the device of Savides for the purpose of carrying a noise maker therein.

Further, it well known in the art to use motion switches for toys. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a motion switch for the device of Savides for the purpose of producing sounds upon the motion of an individual. Further, claims 39-45 do not appear to contain any additional features, which in combination with the features to any claim to which they refer, add anything novel.

Claims 20 and 37 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Savides in view of Castillo.

Savides teaches most of the elements of the claimed invention except for prerecorded sounds. Castillo teaches in the figures a toy having prerecorded sounds. It would have been obvious to one having ordinary skill in the art to incorporate prerecord sounds as suggested by Castillo for the device of Savides for the purpose of generating different sounds from individuals.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Bena Miller
Primary Examiner
Art Unit 3725

bbm
December 18, 2005